Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-89

VIRGINIA W. LUCOM,
Petitioner,

vs.

DAVID L. REID, et al.,
Respondents.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS CLARK, JOHNSON, CULPEPPER, SMALL, CIKLIN AND EFFINGER

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STATEMENT OF THE CASE

Petitioner filed this suit as a civil rights action in the United States District Court for the Southern District of Florida. The essence of her complaint is that her property is over-assessed, and that there is a conspiracy to confiscate her property by various public officials who classified it, in a county land use plan, as a park. Petitioner's complaint (Appendix A, page 1A) and the memorandum opinion written by the United States District Court Judge (Appendix C, page 20A) confirm this.

Petitioner did not file any suit in state court or follow any administrative proceedings prior to filing this suit in federal court for tax relief. The district court judge concluded that federal jurisdiction did not lie because this was a suit to restrain the assessment or collection of a state tax, and that the State of Florida had a "plain, speedy and efficient remedy".

ARGUMENT

As petitioner notes on page 4 of her brief, 28 U.S.C. 1341 provides that the district courts shall not restrain the assessment or collection of taxes under state law where an efficient remedy is available in state courts. In the present case the petitioner sought no relief in state court nor any administrative relief. As a first step for obtaining tax relief she instituted this civil rights action in the United States District Court for the Southern District of Florida.

The essence of petitioner's complaint is that her real property is being over-assessed. The fact that she has labeled this case as a civil rights action does not give her a basis to avoid the applicability of 28 U.S.C. 1341.

In *Bland* v *McHann*, 463 F.2d 21 (5th Cir. 1972), the court was confronted with a factual situation very similar to the present case. A civil rights action was brought by Negroes who were complaining that their property had been increased in valuation by the taxing authorities while most property owned by whites had not been increased. They alleged that the tax assessment was solely as a result of racial discrimination and that it was in retaliation for demonstrations by the Negroes. The court held that 28 U.S.C. 1341 controlled and that the federal courts did not have jurisdiction of the action.

In *Hickmann* v. *Wujick*, 488 F.2d 875 (2nd Cir. 1973), the plaintiff was seeking an injunction, declaratory relief, and damages in a case, which, like this one, was essentially for tax relief. The Second Circuit held that this attempt was nothing more than a "play on words", 488 F.2d at 876, and dismissed for lack of jurisdiction.

In *Evangelical Catholic Communion, Inc.* v. *Thomas*, 373 F.Supp. 1342 (D. Ver. 1973), a civil rights action again was the method by which the plaintiffs attempted to avoid 28 U.S.C. 1341. An action was brought for injunction and damages on the theory that property which was being taxed was exempt for religious reasons. The court pointed out on page 1344 that in order to make a determination as to whether the plaintiffs could recover damages it would be necessary for the court to first enter a declaratory judgment which would be in violation of 28 U.S.C. 1341.

Petitioner contends that the decision in this case conflicts with *Bamford* v. *Garrett*, 538 F.2d 63 (3rd Cir. 1976). That case is distinguishable both on the facts involved and the law applicable. The plaintiff's claim in that case was that property values in non-white areas of a certain Pennsylvania County were declining while values in white neighborhoods within the same county were increasing. This fact combined with the fact that annual assessments were not being made of the property, resulted in unfair discrimination in taxes. Plaintiffs sought an injunction requiring Pennsylvania authorities to make annual assessments and to assess the property on a non-discriminatory basis. The Third Circuit analyzed Pennsylvania law and the remedies available to taxpayers, concluding that they were inadequate in this type of case. The court specifically found that Pennsylvania did not provide a "plain, speedy and efficient remedy" in accordance with 28 U.S.C. 1341.

The present case does not involve racial discrimination or a class action as was involved in the above case. In the present case the petitioner merely seeks tax relief for herself individually.

Nor can it be said that Florida law does not provide the taxpayer with an efficient remedy. Fifth Circuit Court of Appeals has expressly held that Florida does provide a plain, speedy and efficient remedy within the meaning of 28 U.S.C. 1341 in *Carson* v. *City of Fort Lauderdale*, 293 F.2d 337 (5th Cir. 1961).

Petitioner argues that Florida does not follow the law set forth by this Court in *Sioux City Bridge Co.* v. *Dakota County*, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340. This argument is incorrect. *Dade County* v. *Salter*, 194 So.2d 587 (Fla. 1966), holds that relief will be granted to a taxpayer who alleges that there is a systematic assessment of all property at a lower percentage of full value than the percentage of the value attributed to his property. The Florida Supreme Court cited the *Sioux City* case which holds the same effect, that is, that where all others are assessed at less than 100% of value, the taxpayer is entitled to relief.

It is thus clear that Florida does adhere to the principles announced in the *Sioux City* case, however petitioner has failed to avail herself of such a remedy in the Florida courts.

We see no need to respond on a case by case basis to the other authorities cited by petitioner. The cases from jurisdictions other than Florida are inapplicable because, as we pointed out above, Florida has been found to provide a "plain, speedy and efficient remedy" to the taxpayer.

The Florida cases relied on by petitioner are not in point either. In the quotation on pages 26 and 27 of the petition, which is taken from *Schooley* v. *Sunset*, 185 So.2d

1 (Fla. 2d DCA 1966), it is obvious that the *Cosen* and *Sproul* cases relied on by petitioner did not involve any claims in which constitutional questions regarding equal protection or intentional under-evaluation of other property were raised.

CONCLUSION

The United States District Court Judge properly concluded that this is a suit to restrain the assessment and collection of state taxes, and since Florida has adequate relief available in its state courts, the federal district court was without jurisdiction. This petition for certiorari should be denied.

Respectfully submitted,

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By: LARRY KLEIN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished, by mail, this 10th day of August, 1977, to PAUL J. FOLEY, 710 Pennsylvania Building, Washington, D.C. 20004, L. M. TAYLOR, P. O. Box 14577, North Palm Beach, Florida 33408 and to HAROLD F. X. PURNELL, Assistant Attorney General, Office of the Attorney General, The Department of Legal Affairs, The Capitol, Tallahassee, Florida 32304.

LARRY KLEIN